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May 30, 2002

Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Docket No. RT01-35-005 and -007

Dear Ms. Salas:

Please accept for electronic filing in the above referenced docket the accompanying "Motion of Utah Associated Municipal Power Systems for Leave to File Comments One Day Out of Time" and "Comments of Utah Associated Municipal Power Systems on RTO West Stage 2 Filing."

Very truly yours,

Timothy K. Shuba

Encl.

cc: Service List

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Avista Corporation,	**)**	
Bonneville Power Administration,	**)**	
Idaho Power Company,	**)**	
Northwestern Energy, LLC,	**)**	
Nevada Power Company,	**)**	**Docket No. RT01-35-005 and**
PacifiCorp,	**)**	**-007**
Portland General Electric Company,	**)**	
Puget Sound Energy, Inc., and	**)**	
Sierra Pacific Power Company.	**)**	

MOTION OF
UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS
FOR LEAVE TO FILE COMMENTS ONE DAY OUT OF TIME

Utah Associated Municipal Power Systems ("UAMPS"), an existing intervener in this proceeding,[1] hereby moves the Commission for leave to file its accompanying Comments on RTO West Stage Two Filing one day out of time.

On March 29, 2002, the utilities identified in the caption (the "filing utilities") submitted their RTO West Stage 2 Filing seeking a declaratory order finding that RTO West as proposed in that filing will satisfy the characteristics and functions for an RTO as

[1] UAMPS is an association of 43 municipal and other public power systems in six western states, that provides power pooling and related electric services to its members. UAMPS and its members are Transmission Dependent Utilities that rely on the transmission systems of others to serve their loads and access their resources. Most of UAMPS' members and resources are directly dependent upon the transmission facilities of utilities that intend to participate in RTO West, and all of them will likely take at least some service from RTO West. UAMPS has been actively involved in the development of RTO West and has served on the RTO West Regional Representatives Group since it was formed. UAMPS intervened in this docket and filed comments on the RTO West Stage 1 Filing on November 20, 2000.

required by Order No. 2000.[2] By a Notice of Filing issued on April 9, 2002, the Commission invited comments on the Stage 2 Filing and established April 29, 2002, as the comment date. The due date for filing comments was, by an Errata Notice dated April 10, 2002, and a Notice of Extension of Time dated April 17, 2002, extended first to May 13, 2002, and then to May 29, 2002.

On April 22, 2002, the filing utilities submitted to the Commission an Errata Filing Relating to RTO West Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000 (RT01-35-005). On April 30, 2002, the Commission issued a Notice of the errata filing, and set May 30, 2002, as the comment date for "this filing." UAMPS misunderstood the "filing" referred to in the Notice and believed that the date for comments of the Stage 2 Filing as amended by the errata had been once again reset, this time to May 30, rather than that the Commission contemplated two different comment dates, one for the original filing and one for the errata to that filing just one day later.

UAMPS did not learn of its possible misunderstanding until midday on May 29 during an exchange with another intervener in this docket. UAMPS promptly thereupon called the office of the Commission's Secretary to determine the correct date, and was advised that comments for both the original Stage 2 Filing and its errata were in fact due today, May 30, 2002. To verify that advice, UAMPS later called the Secretary's office again and, this time speaking to a different person, was told that comments on the original Stage 2 Filing remained due on May 29 and that comments addressing the errata filing only were due on the 30th. By this time, however, UAMPS was unable to complete and file its comments by the close of business on May 29.

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[2] *Regional Transmission Organizations*, Order No. 2000, *FERC Statutes and Regulations, Regulations Preambles 1996- 2000*, ¶ 31,089 (1999).

No party will be prejudiced, and the proceeding will not be unduly delayed, by UAMPS' one-day delay. Accordingly, UAMPS respectfully requests that the Commission grant its motion for leave to file its comments one day out of time.

Respectfully submitted,

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Heather H Anderson

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Attorneys for Utah Associated
Municipal Power Systems

May 30, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Washington, D.C., this 30th day of May, 2002.

Timothy K. Shuba
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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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Puget Sound Energy, Inc., and	**)**	
Sierra Pacific Power Company.	**)**	

COMMENTS OF UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS ON RTO WEST STAGE 2 FILING

On March 29, 2002, Avista Corporation, the Bonneville Power Administration, Idaho Power Company, NorthWestern Energy, L.L.C., Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company (the "filing utilities") submitted for filing their "Stage 2" proposal to form RTO West, an RTO in the northwestern United States.[1] The filing utilities contend that their filing contains "all remaining information necessary" for the Commission to evaluate RTO West under Order No. 2000 and request a declaratory order that their proposal meets Order No. 2000's minimum requirements for an RTO. See Order No. 2000, *FERC Statutes and Regulations, Regulations Preambles 1996- 2000*, ¶ 31,089 (1999). Pursuant to the Commission's April 9, 2002, Notice of Filing in this docket, Utah Associated Municipal Power Systems ("UAMPS") hereby submits its Comments on the Stage 2 filing.

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[1] The filing utilities are joined by British Columbia Hydro and Power Authority, a non-jurisdictional Canadian utility.

SUMMARY

Order No. 2000's ultimate ability to provide meaningful benefits to wholesale markets depends upon the realization of two fundamental requirements: First, the RTO must have the actual authority and ability to perform its required functions independently of any market participant. Second, the RTO must be able to exercise that independent authority over all of the transmission facilities needed to provide reliable service to all wholesale customers and markets within its region. These basic requirements, however, directly conflict with the filing utilities' natural incentives to preserve the benefits of vertical integration by restricting the RTO's ability to act independently and limiting the number of facilities over which it might exercise any control. The proposal here, sadly, is driven by these incentives, and thus fails to satisfy Order No. 2000's core requirements. The Commission should condition its order on this filing to require changes necessary to provide RTO West with actual operational independence.

As an initial matter, to realize the benefits envisioned in Order No. 2000, RTOs must not only have a governance structure that is independent of market participants, they must then have the actual authority to make choices and take actions to fulfill the RTO's functions. The proposal here would deny RTO West that ability. The proposed Transmission Operating Agreement ("TOA") contains substantive provisions that would give the filing utilities specific control over RTO West's rates and generator interconnection standards, and general authority to approve its budget. Perhaps more important, the filing utilities propose to control the manner in which RTO West will operate by placing detailed provisions governing the performance of the RTO's core functions, including planning, congestion management, ancillary services and even the

RTO's business practices, in the TOA – an agreement that cannot easily be changed without the Executing Transmission Owners' consent. Finally, by subjecting all RTO West actions taken pursuant to the terms of the TOA to dispute resolution, the filing utilities would deny RTO West final decisionmaking authority over any of the required Order No. 2000 functions.

To ensure that RTO West's "independent board" is able to operate independently in fact as well as in theory, these issues must be addressed: those provisions directly subjecting core RTO functions to the filing utilities' control must be eliminated, and the provisions governing the service the RTO will provide to all customers and establishing the manner in which the RTO will perform its functions must be moved from the TOA to the RTO West tariff, where the RTO (and the Commission) will be able to alter them as experience is gained and conditions change. Finally, RTO West's decisions in furtherance of its required functions should be exempted from the RTO West dispute resolution process.

Just as they propose to deny RTO West the power it needs to operate independently, the filing utilities here – unilaterally and with no supporting objective evidence whatsoever – propose to exclude from RTO West's control, at least for most purposes, significant numbers of facilities that they explicitly concede are necessary to provide wholesale service. Those exclusions plainly prevent RTO West from fulfilling the scope and operational authority requirements of Order No. 2000, providing regional transmission service at non-pancaked rates, or adequately performing required functions like planning and congestion management. Thus, the Commission should require the filing utilities to transfer to RTO West full control over all facilities, including higher

voltage distribution facilities, radial lines, and intermediate voltage transmission facilities that provide or support service to wholesale customers. Transmission owners seeking to exclude facilities based on their asserted "local" function must be required to demonstrate, using load flow studies or other documentation, that they are not used either (i) to provide or support service under at least N-1 or N-2 conditions, or (ii) to provide service to wholesale customers.

In addition to these fundamental issues, aspects of the proposal here would prevent RTO West from meeting Order No. 2000's specific planning requirement. To ensure that RTO West can implement a coherent expansion plan that best meets the regions' needs, the filing utilities' proposal must be modified to (1) give RTO West the right to veto transmission owners' proposals for facilities that will be recovered through RTO West's rates; (2) expand RTO West's backstop authority; (3) give the RTO planning authority over all facilities necessary to provide reliable wholesale service; (4) preclude the transmission owners from substituting their own planning processes for the RTO's; and (5) eliminate the transmission owners' "right to participate" in any upgrades or expansions third parties might propose.

The filing utilities' proposal regarding existing contracts and existing customer rights should also be modified to adequately protect those customers. Existing customers should be permitted to participate in the initial process of identifying and allocating the existing transmission rights that the RTO will be required to preserve, and must be given access to the dispute resolution process if necessary to protect their rights.

UAMPS further observes that the filing utilities here have made clear that so long as their participation is voluntary, it should not be counted upon: they retain the right to

withdraw from the proposal before RTO West forms if any element of the Commission's order here does not meet with their approval, and the TOA contains provisions giving the executing utilities broad authority to withdraw and terminate their participation even after operations have begun. However, RTO West will not be able to realize its goals if its continuing existence is uncertain. In UAMPS' view, it is time for the Commission to reconsider its initial decision to make RTO participation purely voluntary.

Finally, the filing utilities acknowledge that their interregional coordination efforts have, up to this point, excluded all stakeholders except the filing utilities themselves and representatives from the other proposed RTOs in the western interconnection, WestConnect and the California ISO. Consistent with Order No. 2000's requirement of a collaborative process, the filing utilities should be directed to seek meaningful participation from all stakeholders in its interregional coordination efforts.

I. The Proposal Must Be Modified to Enable the RTO to Operate Independently.

Implying that the Commission has already determined that RTO West will meet Order No. 2000's independence requirement, the filing utilities first ask the Commission to "confirm its prior determination that the proposed governance structure of RTO West satisfies the independence characteristic of a regional transmission organization as set forth in 18 C.F.R. § 35.34(j)(1)." Filing Letter at 63. Although the Commission did indeed conditionally approve the governance structure set forth in the filing utilities' Stage 1 filing (and essentially replicated in the instant filing), that approval alone is not sufficient to meet the broader "independence" requirement of Order No. 2000.

In Order No. 2000, the Commission made clear not only that an RTO must have a governance structure that is independent of market participants, but also that the

independent governing body must have the authority to operate the RTO and manage its functions. See Order No. 2000 at 31,075-76 (RTO must be able to establish rates, terms, and conditions of service). This is hardly surprising: it would make little sense to insist upon a governance structure that is independent of market participants, but then to permit market participants (like the filing utilities) to deny that independent board the ability to make decisions regarding the RTO's core functions. That, however, is exactly what the filing utilities here are proposing to do.

The instant proposal threatens RTO West's independence in two ways. First, the TOA contains provisions that grant the filing utilities direct control over core RTO functions, as well as the RTO's entire budget. These provisions must be eliminated. Second, the proposal would generally limit the RTO West board's ability to take any actions or make any decisions with which the filing utilities might disagree by requiring in the TOA that the RTO's functions will be performed in certain specified ways. Among other things, the TOA: contains the details establishing the rates that will apply to RTO West's service; establishes the planning protocol that will be applied to RTO West's system; defines the facilities that RTO West will be entitled to control; establishes the dispute resolution process that will apply to RTO West, as well as to all other interested parties; establishes details to govern RTO West's provision of ancillary services and congestion management; and even details the business practices that RTO West will be obligated to follow. These provisions define and limit the service that RTO West will provide to <u>all</u> customers, not just to the transmission owners that will be parties to the TOA. Under these tight restrictions, RTO West cannot be said to meet Order No.

2000's independence requirement. These provisions should be placed in the RTO West tariff or bylaws so that they will not bind RTO West's operations in perpetuity.

In short, the Commission's approval of the filing utilities' proposal should be conditioned upon requirements that the filing utilities: (1) eliminate those provisions establishing their own rights to control RTO West or its functions, including rate design, interconnection decisions, and budgeting; and (2) transfer all provisions that unnecessarily restrict RTO West's ability to operate independently from the TOA to the RTO tariff or bylaws, or to other documents that the RTO board – and the Commission – will be able to modify as experience and changing circumstances require.

A. A Few Provisions Must Be Eliminated.

The proposed TOA gives the filing utilities the right to participate in or perform at least two core RTO functions: rate design and interconnection decisions. In addition, the TOA gives the filing utilities direct control over the RTO's budget and the right to directly supervise its operations. These provisions should be eliminated to ensure the RTO's independence.

1. Rate Filing Authority.

In Order No. 2000, the Commission made clear that if it is to be truly independent of market participants, the RTO must have "the independent and exclusive right to make Section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO." Order No. 2000 at 31,075. Several utilities sought rehearing of the Commission's decision on this point, arguing strenuously that they must retain the right to file rate schedules and tariffs in order to ensure that their

costs are recovered. The Commission rejected that argument and reaffirmed that while transmission owners may continue to protect their assets by filing to establish the revenue requirements that the RTO would be required to recover, they cannot establish the actual rate tariffs that will apply to RTO service.[2] See Order No. 2000-A, *FERC Statutes and Regulations, Regulations Preambles 1996-2000*, ¶ 30,092, at 31,370-71 (2000) ("Order No. 2000-A").

UAMPS argued in its comments on the RTO West Stage 1 filing that RTO West could not meet Order No. 2000's independence requirement because, in contravention of the Commission's express direction, the filing utilities proposed to deny the RTO the necessary rate filing authority. See Protest and Motion to Intervene of Utah Associated Municipal Power Systems, Docket No. RT01-35-000, at 7-10 (Nov. 20, 2000) ("UAMPS' RTO West Stage 1 Protest"). Although the Commission did not address specifically the impact of the filing utilities' proposal on RTO West's ability to meet Order No. 2000's independence requirement, it did reaffirm that the RTO must have

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[2] More recently, in companion orders issued on April 25, 2002, the Commission denied the requests of TRANSLink and the Alliance Companies, independent transmission companies ("ITCs") planned to operate within the Midwest ISO, to maintain their own separate tariffs, noting that "sub-regional tariffs in the Midwest ISO work against the goals of one-stop shopping and tariff clarity without offsetting benefit." *Order Authorizing Disposition of Jurisdictional Facilities and Participation in the Midwest ISO Regional Transmission Organization*, 99 FERC ¶ 61,106, slip op. at 22 (Apr. 25, 2002) (the "TRANSLink Order"); *Order on Petition for Declaratory Order*, Docket No. EL02-65-000, slip op. at 14 (Apr. 25, 2002) (the "Alliance Order"). The orders did permit TRANSLink and Alliance to maintain separate schedules within the MISO tariff. See *id.* These decisions, however, do not suggest that the filing utilities' proposal here should pass muster under Order No. 2000. As described in more detail in the text below, the RTO West filing utilities here propose to control the rates that the RTO will charge for service over all of its facilities. Moreover, the filing utilities propose to retain this authority even though they are vertically integrated utilities, and not independent transmission companies like TRANSLink and Alliance.

"independent and exclusive" rate filing authority. *Order Granting, With Modification, RTO West Petition for Declaratory Order and Granting TransConnect Petition for Declaratory Order*, Docket Nos. RT01-15-000 and RT01-35-000, 95 FERC ¶ 61,114, at 61,338 (Apr. 26, 2001) (the "April 26 Order"). While finding that transmission owners that are themselves independent of market participants (such as TransConnect, the purportedly independent transmission company proposed to operate within RTO West's footprint) might properly propose incentive rates as a component of their revenue requirements, the Commission made clear that "where incentive proposals conflict with established RTO West tariff requirements, RTO West, as the exclusive administrator of its tariff, must retain the ability to reconcile differences in those proposals with its tariff design," and directed the filing utilities to "amend the Transmission Operating Agreement consistent with this finding." *Id*. at 61,339. The Commission further "require[d] that the Transmission Operating Agreement be revised to eliminate the authority of those transmission owners that are not independent of market participants, to unilaterally file with the Commission to establish or change rates under the region-wide RTO tariff." *Id.*

In disregard of the Commission's specific direction, the TOA submitted in this Stage 2 filing continues to reserve control over RTO West's rates and tariffs for the filing utilities themselves. For example, § 16.1.1 of the proposed TOA provides that during the Company Rate Period, "the Executing Transmission Owner shall establish Company Costs and Company Billing Determinants for its Company Loads, except as otherwise provided in Section 17." Section 17, however, at bottom merely reaffirms the filing utilities' control over this critical RTO function, stating unequivocally that

"[n]otwithstanding any other provision of this Agreement, during the Company Rate Period, RTO West's charges for all Transmission Service using the RTO West Transmission System shall be composed of" the specific charges that the filing utilities have proposed, calculated in the manner they specify. TOA § 17.2. Indeed, RTO West is characterized merely as a "billing agent" whose role will be simply to collect the charges dictated by the terms of the TOA.[3] See TOA § 17.3.7. The proposal thus denies RTO West any meaningful authority to establish rates during the Company Rate Period. As UAMPS makes clear in Section VI, *infra*, UAMPS does not oppose the Company Rate period as a transitional means to mitigate cost-shifting, so long as those Company Rates are properly set through a Section 205 filing at the start of RTO West's commercial operations and so long as RTO West's ratemaking hands are not otherwise tied.

More important, § 16.1.2 provides that "[a]fter conclusion of the Company Rate Period, the Executing Transmission Owner shall continue to establish, in accordance with applicable law, its tariffs or rate schedules for charges to be recovered through RTO West consistent with this Agreement." And, while some of the language in § 17.1 appears to give the RTO some ability to design and establish its own rates after the conclusion of the Company Rate Period, the Section unambiguously provides that "RTO West and the Executing Transmission Owner agree to cooperate, before any termination of the Company Rate structure, in developing such rate structure," thus strongly suggesting that

[3] WestConnect similarly proposed to deny the RTO any meaningful authority to establish its own rates. See Protest and Motion to Intervene of Utah Associated Municipal Power Systems, Docket Nos. RT02-1-000 and EL02-9-000, at 17-18 (Nov. 20, 2001) ("UAMPS' WestConnect Protest").

the filing utilities will be at least equal partners with RTO West in implementing any new rate design.

In addition to retaining rate-filing authority for all transmission owners in general terms, the proposed TOA more particularly disregards the Commission's direction with respect to "independent" transmission owners. As noted above, the Commission has found that such transmission owners may include incentive rate proposals within their revenue requirement filings, subject to the RTO's ultimate right to reconcile any discrepancies between those filings and its own tariff requirements. See, *e.g.*, April 26 Order at 61,339. The filing utilities here, however, propose to transform the RTO's supervisory authority into an obligation to "reconcile" its own tariff to the transmission owners' preferences: Section 16.3.1 provides that an independent transmission owner may "unilaterally file with FERC for modification of its rates and rate recovery mechanisms" and requires the RTO to "reconcile any . . . conflicts [with the RTO West Tariff rate design] and . . . conform its tariffs and practices as necessary to ensure collection of rate recovery mechanisms accepted by FERC for the Executing Transmission Owner." This mechanism stands the authority required by Order No. 2000 on its head, giving the independent transmission owners the final say.

In short, the current version of the TOA continues to reserve for the filing utilities the authority to develop and implement RTO West's rates, and therefore necessarily denies that same authority to RTO West. The Commission should direct the filing utilities to modify their proposal to give RTO West actual ratemaking authority.

2. Interconnection Standards.

The TOA also gives the filing utilities direct authority over the interconnection standards that RTO West will use. Section 5.1 of the TOA first requires the RTO to apply the transmission owner's standards to any requests to interconnect with the RTO West Transmission System. Although § 5.1 purports to give RTO West the right to later adopt its own interconnection standards, subject to the limitation that the new standards "not have a material adverse impact on the Executing Transmission Owner's Electric System or Interconnected Loads (including financial impacts)," TOA § 5.1, this grant of authority appears to be largely illusory. The RTO is required to permit the transmission owner to "participate" in the development of any new interconnection standards, and the transmission owner has the right to force the RTO to dispute resolution to preclude the implementation of the RTO's preferred standards.

The ability of other market participants to interconnect with the transmission system is, of course, critical to the development of competitive wholesale markets, and the existing transmission owners stand to gain substantially if additional parties are delayed or precluded from connecting with the system. The TOA should therefore be revised to eliminate the transmission owners' ability to control the RTO's development and implementation of such standards.

3. Budget and Operations.

Finally, § 18 of the TOA contains a number of provisions that will permit the transmission owners to directly oversee and control the RTO's budget and general operations. Section 18.2.2, for example, requires the RTO to prepare an annual budget and submit it to the Executing Transmission Owners for their approval. This control over

the RTO's budget will give the filing utilities de facto control over virtually all aspects of the RTO's operations, including its staffing, salaries, and equipment needs. In a similar vein, § 18.2.3 requires the RTO to make its records and financial statements available to the Executing Transmission Owners, and § 18.3 requires the RTO to submit to audits by the Executing Transmission Owners.

All stakeholders of course have an interest in ensuring that RTO West is efficiently and properly run. Thus, provisions that provide for annual reports that include financial statements and performance results and make RTO West records available to all stakeholders have already been incorporated into the RTO West bylaws. See RTO West By-Laws, Filing Letter Att. C, at Art. IX. The TOA provisions giving the filing utilities special supervisory rights and access, particularly over RTO West's budget, would give the filing utilities an unacceptable degree of control over RTO West and should be eliminated.

B. Many TOA Provisions Should be Moved to the RTO West Tariff.

In addition to providing for direct control over the RTO in a few respects, the filing utilities' proposal would prevent RTO West from independently performing many of its other required functions and operating responsibilities (as well as meeting Order No. 2000's open architecture requirements) because the details of the proposal are all set forth in the TOA, rather than in an RTO West tariff or any other document that might be altered without the filing utilities' consent.[4] Although UAMPS currently does not oppose many of the operational details the filing utilities have proposed, we do believe it is

[4] In addition, as discussed in Section II below, the RTO's exercise of its Order No. 2000 functions should not be subjected to the filing utilities' dispute resolution process.

critical that all aspects of the proposal listed below be removed from the TOA in order to free RTO West's and the Commission's hands to modify various details over time, and to ensure that other stakeholders are able to participate on an equal footing with the filing utilities in future proceedings to modify RTO West's operations.

In UAMPS' view, the TOA should do little more than convey operating and pricing authority over affected facilities to the RTO; provide for safe and secure operation and interconnection of loads, generators and new facilities; require payment of FERC-approved revenue requirements; require the RTO to abide by FERC requirements for an approved RTO; and provide for potential unwinding. That is, it should contain provisions that affect the Executing Transmission Owners uniquely as owners of the transmission assets that RTO West will operate. It should not dictate terms and conditions of transmission service, dispute resolution, or business practices that affect all transmission customers and stakeholders; or specify details of functions, such as congestion management and planning, that the RTO itself is supposed to perform. Placing these provisions in the TOA unnecessarily denies the RTO the ability to independently manage its own operations and limits the rights of all stakeholders other than the filing utilities.

In accordance with this principle, many if not all of the provisions contained in at least the following sections should be transferred to the RTO West tariff or bylaws, as appropriate:

- § 2.4.2 (establishing the RTO's duty to customers that take service under converted pre-existing transmission agreements upon the transmission owners' withdrawal from the RTO)

- § 6 (defining the types of facilities that RTO West will be entitled to control)
- §§6.4-6.5 (specifying details of the RTO's provision of transmission services)
- § 6.7 (establishing RTO West's duties as a transmission service provider)
- § 7 (defining RTO West's congestion management mechanisms)
- § 9.5 (establishing protocols regarding the RTO's provision of incentives to pre-existing contract customers to schedule early)
- § 10 (defining RTO West's ancillary services function)
- § 11 (locking in RTO West system maintenance procedures)
- § 14 (limiting RTO West's ability to arrange for upgrades to or expansions on RTO West Controlled Transmission Facilities)
- § 15 (establishing details of RTO West's planning and expansion process)
- §§ 16 & 17 (establishing details of RTO West rate structure and rates)
- § 17.3.5 (establishing rights of transmission owner customers regarding load growth and Catalogued Transmission Rights)
- § 18 (dictating specific business practices RTO West must follow, subject to transmission owner's direct supervision)
- § 20 (establishing RTO West's dispute resolution process)

Added to the foregoing list of matters that more properly belong in the tariff than in the TOA should be §§ 9.1-9.4 (establishing the rights of pre-existing contract holders) but for reasons different from preserving RTO independence. To the contrary, UAMPS does not suggest that moving the provisions regarding the rights of pre-existing contract holders out of the TOA would then give RTO West – or any other party – the unilateral right to modify or abrogate the actual terms of those contracts; UAMPS believes that

rights under existing contracts should be formally preserved. The provisions providing for such preservation, however, do not belong in the TOA, a contract to which the customer whose rights are at issue would not be a party. See Section V, *supra*.

Together, the provisions listed above essentially establish the service that RTO West will provide and the manner in which it will operate. These are issues and protocols that, consistent with Order No. 2000's requirement, the independent RTO must have the ability to manage and modify as experience is gained, and best practices emerge and evolve. They should not, therefore, be frozen into the TOA, where they cannot easily be changed without the filing utilities' consent. Perpetual control over all aspects of RTO West's operations is not a necessary trade-off for conveying operating authority to the RTO: indeed, such a price would largely negate the purpose of the bargain.

C. Conclusion

Although the Commission has previously approved the proposed RTO West governance structure set forth in the bylaws, an independent but powerless board of directors cannot ensure that the transmission system is independently operated to foster and promote competitive markets, nor is the mere existence of such a board sufficient to meet Order No. 2000's independence requirement. To meet these ultimate objectives, the independent board must actually be empowered to make decisions and operate the system without being hampered by either direct and ongoing oversight by the transmission owners or detailed contractual direction. The proposal must be modified as discussed above to ensure that Order No. 2000's independence requirement is met.

II. The Dispute Resolution Provisions Must Be Modified

The detailed RTO West dispute resolution process is currently set forth in § 20 of the TOA. As discussed above, these provisions must be moved from the TOA to the RTO West tariff in order to ensure that parties other than RTO West and the Executing Transmission Owners will have access to the process, and that the process may be modified in the future without the filing utilities' consent. In addition, however, there are a few substantive aspects of the proposal that must be modified to ensure that Order No. 2000's requirements are met and that third parties' rights are adequately protected.

First, disagreements over RTO West's exercise of its core functions should not be subject to dispute resolution. Under the current proposal, the dispute resolution provisions apply to "all disputes that arise under this Agreement, whether or not a specific provision for Dispute Resolution is made in a section of this Agreement pursuant to which the dispute arises." TOA § 20.1.1. In addition to this catchall, other provisions of the TOA specifically allow the Participating Transmission Owner to use the dispute resolution process to challenge RTO West's decisions on issues like the provision of ancillary services (§ 10.3.2), generator interconnection standards (§ 20.7.2), maintenance performance plans for RTO West Controlled Transmission Facilities (§ 11.3), and planning and expansion (§ 14.7). Thus, the dispute resolution process would apparently apply to all RTO West decisions, including those regarding congestion management, facilities inclusion, and planning.

The Commission has recently confirmed that transmission owners may not use the dispute resolution process to limit the RTO's ultimate authority over its required functions. Ruling on the issue in the context of a planning and expansion proposal, the Commission noted in its recent TRANSLink order (at 40): "We believe that the RTO, not

an outside arbitrator, must have the ultimate authority regarding planning and expansion for its region." As the Commission recognized, an RTO cannot perform its planning function – or any of its required functions – independently or authoritatively if the filing utilities (or any other party) are free to ask an independent arbitrator to reverse the RTO's decision in favor of a position that party prefers.[5] It is one thing to require that tariff changes need Commission approval; the transmission owners do not need a second path to block implementation of the RTO's "independent" judgment. The proposal here should be amended to exempt RTO West's exercise of its core functions from the dispute resolution process and to give the RTO the authority it needs to meet Order No. 2000's requirements.

In addition to exempting the RTO's decisions over core functions from the process altogether, a few specific provisions of the dispute resolution proposal must be modified to grant other parties rights equal to those the filing utilities would enjoy. For example, under Section 20.2.1, only the Executing Transmission Owner and RTO West have the right to initiate arbitration. Section 20.3.5.1 similarly limits the right to intervene in arbitration proceedings to RTO West and any Participating Transmission Owner not named as a party in the statement of claim. These provisions would apparently deny other interested parties the right to invoke the dispute resolution process, or to intervene in arbitration proceedings to protect their rights. The Commission should

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[5] The WestConnect tariff set forth a similar provisions stating that any dispute between a project proponent and WestConnect will be subject to dispute resolution. See UAMPS' WestConnect Protest at 41. As UAMPS argued in its WestConnect protest, however, although transmission owners may participate in transmission planning within their service areas, Order No. 2000 does not allow them to stand on an equal footing with the RTO in deciding which projects should be approved. See *id.*

order that the dispute resolution provisions be amended to provide the same protections to customers that they provide to Participating Transmission Owners.

III. The Filing Utilities Have Excluded Necessary Facilities from RTO West's Control.

In its RTO West Stage 1 order, the Commission emphasized that "for an RTO to satisfy our scope and configuration characteristics, most or all of the transmission facilities in a region should be operated by the RTO, as well as those necessary for operational control and management of constrained paths, regardless of the voltage." April 26 Order at 61,345. In addition, the Commission clarified that "[s]ome of these facilities may currently operate as higher voltage distribution lines while others may be a lower voltage radial line that is considered essential for wholesale transmission service." *Id*. In defiance of this express direction, the filing utilities have asked the Commission to approve a proposal that excludes from RTO West's control significant numbers of facilities needed to serve wholesale customers, without offering any functional justification for their exclusions. If approved, the facilities proposal would prevent RTO West from fulfilling the requirements and functions of Order No. 2000 and from ensuring that all customers have access to non-discriminatory transmission services.

UAMPS has repeatedly urged the Commission to adopt a uniform and inclusive standard for identifying the facilities that must be transferred to RTO control in order to satisfy the scope and operational control requirements of Order No. 2000. See, *e.g.*, Comments of Utah Associated Municipal Power Systems on RTO Week, Docket No. RM01-12-000, at 26-29 (Nov. 14, 2001) ("UAMPS' RTO Week Comments"); Comments of Utah Associated Municipal Power Systems on the Commission's Working

Paper on Standardized Transmission Service and Wholesale Electric Market Design, Docket No. RM01-12-000, at 10 (Apr. 9, 2002) ("UAMPS' SMD Comments"). The filing utilities have every incentive to try to retain control over as many transmission facilities as possible in order to preserve the advantages of vertical integration, which include providing preferential (and discriminatory) transmission service to affiliated generators and their own retail loads. If the filing utilities are thus permitted to withhold their facilities from RTO control at will, RTO West will be prevented from realizing many of the benefits envisioned by Order No. 2000. To ensure that RTOs provide one-stop shopping for reliable, non-pancaked transmission service, the Commission should establish a well-defined standard that all facilities, including higher voltage distribution facilities and radial lines, that provide or support service to wholesale customers are to be transferred to RTO control. Accordingly, the filing utilities here should be required to transfer to RTO West full control over all transmission or other facilities used to provide or to support service to wholesale customers. Transmission owners seeking to exclude facilities because of their purely "local" function must be required to demonstrate, using load flow studies or other supporting documentation, that the facilities are not necessary either to: (i) serve wholesale customers, or (ii) provide reliable wholesale transmission service under at least N-1 and N-2 conditions.

A. The Filing Utilities' Proposal.

The filing utilities propose to create three classes of facilities within the "RTO West Transmission System"; a fourth class of facilities, so-called "local distribution" facilities that are used to serve wholesale customers, are classified separately and excluded from the RTO West Transmission System.

The core of the system is to be comprised of "RTO West Controlled Transmission Facilities" ("Class A facilities"), which the filing utilities define as those facilities "that (1) materially impact the transmission system's transfer capability (the capability of a transfer path in the WSCC's path ratings catalogue) and (2) are necessary for RTO West to carry out its congestion management function." Filing Letter at 34 n.38. The TOA requires transmission owners to include as Class A facilities only those facilities "that have a *material* impact on RTO West's ability to execute its congestion management function." TOA Exh. A at A-15 (emphasis added). Neither the TOA nor the description of the facilities proposal in the Filing Letter defines what constitutes a "material" impact for the purpose of defining a facility as a Class A facility. Instead, that determination is apparently left to each filing utility's discretion. Further, despite the Commission's express confirmation that some radial lines may need to be included as "essential for wholesale transmission service," April 26 Order at 61,345, the TOA explicitly provides, to the contrary, that the transmission owner "shall not be required" to define as Class A facilities those facilities "that are radial to load." TOA Exh. A at A-15. Similarly, although the Commission has already told the filing utilities that some necessary facilities may well be "distribution" lines, April 26 Order at 61,345, only facilities bearing the label "transmission" need be included in Class A for full RTO West control. Thus, it cannot be determined from the facilities proposal exactly how the filing utilities intend to decide what is a Class A facility, except that they will not be required to include <u>any</u> radial or "distribution" lines, regardless of voltage or function.

Other "transmission" facilities that do not satisfy the filing utilities' application of the Class A criteria ("Class B facilities")[6] may – but need not – be turned over to the RTO for limited purposes, apparently at the sole option of each transmission owner. See Filing Letter at 34. "Certain Distribution Facilities" ("Class C facilities"), over which RTO West will have even less control, consist of those "dual function facilities that are used primarily to provide retail load service, with a secondary purpose of providing, and supporting the provision of, wholesale services." *Id*. at 34 n. 39. Again, however, and despite the filing utilities' acknowledgement that these facilities have at least a "secondary" (in the filing utilities' undocumented estimation) "effect on RTO West's ability to execute its congestion management function," *id*., the identification of certain facilities as Class C appears to be entirely within the discretion of the transmission owner. Finally, the filing utilities have defined "Class D facilities" as "local distribution facilities" that "are needed to transmit wholesale power." *Id.* at 34 n. 41. These facilities are excluded, without further explanation, from the RTO West Transmission System. *Id*.

Under the proposal, RTO West will have the authority to perform different functions for each class of facilities. For Class A facilities, RTO West will have full operational control, as well as authority over pricing, planning, interconnection standards, maintenance guidelines, direction of maintenance, and dispute resolution standards. See Filing Letter at 35-36. Class B facilities, however, will be turned over for purposes of pricing and access, but not control, and the transmission owner will have the authority to

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[6] The filing utilities propose to list all Class A and Class B facilities on their Exhibits B to the TOA. See TOA §§ 6.1.1, 6.1.3. Class A facilities will be listed separately on the filing utilities' Exhibits D to the TOA. Thus, to determine what facilities are in fact Class B facilities, it will be necessary to compare the Class A facilities listed on Exhibit D to the Class A and B facilities listed on Exhibit B.

operate and maintain those facilities and to develop the planning process, maintenance guidelines, interconnection standards, and dispute resolution standards for them. See *id*.

RTO West will provide wholesale access to Class C facilities, but the Participating Transmission Owner may also collect "distribution" charges for these facilities under a Commission-regulated wholesale distribution charge additive to the RTO West transmission charge.[7] See *id*. With regard to operational control, although the filing utilities admit that the Class C facilities affect the RTO's ability to provide wholesale transmission services and "execute its congestion management function," *id*. at 34 n.39, RTO West will only have "sufficient operational control to provide adequate wholesale transmission service across the Class C facilities." *Id*. at 36 n.3. The standards for "sufficiency" and "adequacy," and thus the contours of this limited operational control, are entirely undefined. The planning function for these facilities will be shared: RTO West will apparently have planning authority over Class C facilities for transmission adequacy and congestion management purposes, but the Participating Transmission Owner will retain ultimate authority over "local distribution" planning. See *id*. at 37 n.7.

RTO West will control the facilities designated as "local distribution" or "Class D" facilities for the purpose of access alone; "access" in this context means only "the

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[7] It is not clear how the filing utilities intend to collect these charges for Class C or Class D facilities. The summary chart in the Filing Letter indicates that pricing for Class C facilities will take place under the RTO Tariff, see Filing Letter at 35, but footnote 3 states that the wholesale distribution charge for Class C may be collected under a Wholesale Distribution Access Tariff. See *id*. at 36 n.3. Pricing for Class D facilities will take place under a "PTO Charge" according to the chart, see *id*. at 35, reference is made to the same footnote stating that a wholesale distribution charge "additive to the RTO West transmission charge" may apply for Class D facilities as well. *Id*. at 36 n.3.

function of accepting and processing requests for service." *Id*. at 36. RTO West will have no other authority or control over Class D facilities.[8] Those facilities will be priced using a "PTO Charge" similar to the charge for Class C facilities but apparently collected directly by the transmission owner. See *id*. at 35; see also footnote 7, *supra*.

B. The Filing Utilities Have Offered No Functional Justification for Their Proposed Classifications.

Even if the filing utilities could properly limit RTO West's control over certain categories of transmission facilities, they have offered no data or studies to support the classifications and accompanying limitations they propose here. Indeed, the filing utilities fail even to provide objective assurance that all relevant facilities will be turned over to RTO West for any purposes.

Under the proposal, a significant portion of the transmission facilities within the RTO West region will be excluded from RTO West control for some or all purposes – essentially at each transmission owner's option. As noted above, each transmission owner apparently may make a unilateral decision as to what facilities have a "material" impact on RTO West's ability to carry out its congestion management function (and thus have to be included as Class A facilities under RTO West's control).

The filing utilities propose to retain control over "Class B" facilities without any showing that these transmission facilities are not an integral part of the transmission network, or that RTO West will be able to achieve its regional goals or provide reliable wholesale service without them. The filing utilities also propose to allow a transmission

[8] Because Class D facilities are not mentioned anywhere in the TOA, it is not clear how the filing utilities propose to give RTO West the ability even to provide wholesale access to those facilities.

owner "at its election…or, subject to FERC approval if applicable" to remove those Class B facilities from the RTO West Transmission System altogether at any time. TOA § 6.1.3.

In addition, the filing utilities seek a summary exclusion of all "distribution" assets from RTO control without offering any substantive support for the designation of those assets. The filing utilities acknowledge that the "Class C" or "Certain Distribution" facilities "have a secondary effect on RTO West's ability to execute its congestion management function" but offer no load flow or other studies to distinguish them functionally from facilities that RTO West will need to control. Filing Letter at 34 n. 39. In the same vein, they acknowledge that the Class D facilities (local distribution facilities) "are needed to transmit wholesale power" but withhold them from RTO West control on the basis of their designation of those facilities as "distribution." *Id*. Although presumably any facilities that are not designated as Class A, B, or C facilities and that are used to provide wholesale service would be classified as Class D facilities, there is no way to verify that from the instant filing. It is thus possible that the filing utilities could withhold some facilities used for wholesale service from RTO West for <u>all</u> purposes.

The mere fact that Class C or Class D facilities may be classified as distribution "pursuant to State or federal order," of course, does not justify their exclusion from RTO West's control. The Commission has repeatedly affirmed that the determination of what facilities need to be under RTO control to satisfy the requirements of Order No. 2000 is a separate issue from the classification of assets in the context of a state retail access program. See, *e.g.*, *Order Accepting for Filing Revised Rates*, Docket No. ER02-605-000, 98 FERC ¶ 61,168, at 61,622 n.6 (Feb. 15, 2002) (directing Puget Sound Energy to

refile its request to reclassify certain facilities as "retail distribution" facilities as a petition for a declaratory order and noting that any action taken on that petition would not affect the "Commission's separate determination of what facilities need to be under the operational control of RTOs").

Moreover, in an analogous context, the Commission recently directed an ITC to substantiate its classification of certain facilities as "Local Facilities" for the purpose of excluding them from the RTO's pricing authority. In its April 25, 2002 order, the Commission directed TRANSLink to "provide a detailed description of the power flow models relied upon to classify facilities as Highway Facilities and Local Facilities." TRANSLink Order, slip op. at 29. TRANSLink was further directed to "fully substantiate the reasonableness of its assumptions that all non-radial transmission elements operating at voltages of 230 kV and above perform a regional highway function and all transmission elements operating at voltages of 100 kV and below perform a local function." *Id*. Here, the RTO West filing utilities not only fail to "fully substantiate" the assumptions used to classify their transmission facilities; they hardly even attempt to explain them. At the very least, then, the Commission should direct the filing utilities to submit load flow studies or other data – beyond a mere "distribution" label – to support withholding Class B, C or D facilities from full RTO West control.

C. The Proposal Would Prevent RTO West from Meeting the Requirements of Order No. 2000.

The filing utilities' proposal would perpetuate the balkanization of the system and would make it impossible for RTO West to fulfill the requirements of Order No. 2000. For example, at least two of the filing utilities – Puget Sound Energy and Sierra Pacific –

have, with no further substantiation, excluded from RTO West control significant portions of their transmission systems simply because they were recently reclassified as "distribution" for the purposes of state retail access programs. Puget Sound's list of Class C facilities is identical to the list of facilities approved for reclassification as "distribution" in a proceeding before the Washington Utilities and Transportation Commission, even though, as noted above, in accepting that reclassification the Commission very explicitly instructed Puget Sound that a separate evaluation had to be made for purposes of RTO control. Compare *Declaratory Order Approving Petition and Adopting Accounting Provisions*, Docket No. UE-010010, at Exh. A (Washington Utilities and Transportation Commission, Apr. 5, 2001) with Filing Letter Att. D at 45-47.

Sierra Pacific went even farther, omitting mention of any of their "distribution" facilities from the proposal altogether.[9] Sierra Pacific's list of facilities in Attachment D included only a brief list of Class A facilities, including two 345 kV transmission lines that extend north and west from the Valmy generating station in Sierra Pacific's service territory in Nevada.[10] Those two lines are connected by a series of looped 120 kV and 60 kV facilities that, because they directly serve large retail mining loads, were reclassified as distribution. That classification for retail access purposes, however, has no impact on

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[9] As noted above, it is possible that Sierra intends to classify these distribution facilities as Class D facilities, but that cannot be verified from the filing. In any event, because these facilities provide and support wholesale service, they should be turned over to RTO West for all purposes, including control.

[10] One runs from Valmy to Idaho Power's Midpoint station in Idaho; the other runs from Valmy to Sierra Pacific's Falcon substation, and is in the process of being extended to Sierra Pacific's interconnection with PacifiCorp and Los Angeles Department of Water Resources at the Gonder substation.

the role of these looped facilities in supporting the provision of wholesale service across the 345 kV lines to which they are connected. In fact, testimony in proceedings before the Nevada Public Utilities Commission has shown that those facilities are used to support wholesale service over the 345 kV lines, increase Sierra Pacific's export capabilities, improve system losses and increase system stability and reliability. See Protest and Motion to Intervene of Utah Associated Municipal Power Systems, Docket Nos. RT01-15-002 and ER02-323-000, at 12-13 (Dec. 13, 2001) ("UAMPS' Stage 2 TransConnect Protest"); see also excerpted pages 13-20 from Testimony and Exhibits of Stephen Page Daniel, PUCN Docket No. 01-11030 (Mar. 22, 2002), attached to these comments as Appendix A and addressing the functions performed by these facilities (called "HVD" or "High Voltage Distribution" in the testimony). It is unclear whether Sierra Pacific intends to classify these "distribution" facilities as Class C or D facilities or to withhold them from RTO West altogether. Even if Sierra Pacific intends to turn over some restricted control for "access" or other limited purposes, such facilities plainly support the provision of wholesale transmission service, and, consistent with the standard proposed above, then, the facilities should be under RTO West's full operational control.

Sierra Pacific has also omitted from its list of facilities the lines that serve the City of Fallon, Nevada, a municipal utility and transmission customer of Sierra Pacific (and one of UAMPS' members). The facilities that serve Fallon were reclassified from transmission to distribution along with the facilities discussed immediately above and have presumably been withheld from the RTO West Transmission System for that reason. The fact that the facilities were designated as "distribution" for the purpose of retail access, as noted above, does not alone justify their exclusion, nor does the fact that

Fallon is served by a radial line. See April 26 Order at 61,345. In fact, the facilities should be presumptively included because, as with the looped facilities mentioned above, Sierra Pacific cannot possibly show that they are not needed to serve wholesale customers. The Commission should not allow the filing utilities to mandate unilaterally that certain customers – such as Fallon – will receive different service simply because the lines to which they are connected were renamed in an unrelated proceeding.[11]

Similarly, PacifiCorp has proposed, without any demonstrated functional justification, to classify all transmission lines rated at 69 kV and below, as well as certain 138 kV and 115 kV lines, as "Class B" facilities that would be excluded from RTO West's operational control. See Filing Letter Att. D at 32-40. Most of UAMPS' members take service from these Class B facilities, for which PacifiCorp proposes to retain its own: (1) operation standards, (2) operational control, (3) maintenance guidelines, (4) maintenance execution, (5) solutions for congestion management, (6) planning process, (7) interconnection standards, and (8) dispute resolution standards. See Filing Letter at 35-36. Under the circumstances, RTO West's ability to meet the requirements of Order No. 2000 and to provide reliable, non-discriminatory wholesale service over these facilities will plainly be severely restricted. The extensive exclusion of facilities used to support the provision of wholesale service, particularly in combination with the filing utilities' acknowledgement that many of these facilities themselves

[11] In many cases, the "refunctionalization" of facilities is driven less by "function" and more by concerns over local control over facilities and retail service. "Local control," however, should not be permitted to trump the development of competitive wholesale markets. Legitimate concerns over local control can be accommodated by permitting such control over truly local facilities only, but even then always subject to the final authority, standards, and control of the RTO, and ultimately, of this Commission.

provide wholesale service (see Filing Letter at 34), means that RTO West will be handicapped in performing the planning function, controlling for loop flow, and providing the reliable service – particularly under common N-1 or N-2 conditions – that Order No. 2000 envisions.

Indeed, the proposal even threatens RTO West's ability to provide transmission service at non-pancaked rates. As noted above, the filing utilities propose to price their Class C facilities under the RTO tariff, *id*. at 35, but admit that in some circumstances, the customer would pay a "Commission-regulated wholesale distribution charge additive to the RTO West transmission charge." *Id*. at 36 n.3. The same appears to be true for Class D "local distribution" facilities, *id*., but the charge for their use will evidently not be collected under the RTO tariff. *Id*. at 35. The filing utilities claim that the total of the RTO transmission charge and the wholesale distribution charge will not exceed the transmission rate that would have been charged if all of the Participating Transmission Owner's facilities had been classified as transmission, "*i.e.*, no rate pancaking, only a segmentation of the pricing." *Id*. If RTO West has the rate authority required by Order No. 2000, however, the RTO West Transmission Rate would be outside the Participating Transmission Owners' control.[12] The filing utilities, then, cannot ensure that a customer subject to the "wholesale distribution charge" would not ultimately pay a pancaked rate in excess of the otherwise applicable RTO West rate.[13]

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[12] Of course, as pointed out in Section I, *supra*, the filing utilities' current proposal would effectively deny RTO West this control over its own rates.

[13] The description in the Filing Letter may be taken as a promise to reduce the wholesale distribution rate to whatever extent necessary to keep the total at or below the otherwise applicable RTO West Transmission Rate. Even then, however, the promise could be kept only as long as "Company Rates" are maintained. If RTO West is ever to

To ensure that Order No. 2000's requirements are met, the filing utilities should be ordered to include as "Class A" facilities subject to full RTO West control all facilities, including higher voltage distribution facilities and radial lines, that are necessary to serve wholesale customers or to provide reliable transmission service under N-1 and N-2 conditions.

D. The Facilities Proposal Limits RTO West's Ability To Ensure Non-Discriminatory Access to Transmission Facilities.

Because it excludes significant numbers of facilities necessary to provide wholesale service, the filing utilities' facilities proposal would also permit the continuation of exactly the type of discrimination in the provision of transmission service that Order No. 2000 was intended to address. Specifically, the proposal would perpetuate the lack of comparability both between transmission services offered to customers in different transmission owners' service areas, and between transmission services for wholesale and retail customers.

First, denying RTO West uniform control over all facilities necessary to provide reliable wholesale service would result in differing levels in the quality of service for different wholesale customers, depending upon the specific utility to which they are connected. [14] For customers (such as UAMPS) taking service from Class B facilities, the transmission owner would retain, among other things, its own congestion management

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move toward a unified postage stamp rate, those customers subject to various transmission owners' "wholesale distribution charges" would inevitably be paying a pancaked rate that would effectively subsidize users connected to other utilities' systems.

[14] As discussed above, these customers would potentially face different rates for their wholesale service as well.

solutions, planning protocols, maintenance guidelines and execution, interconnection standards, and operational control, and would continue to critically influence the quality of the service those customers receive. See Filing Letter at 35-36. By contrast, a wholesale customer taking service from a utility like Bonneville, which is proposing to transfer all of its transmission facilities to the RTO, would not face a transmission-owning intermediary between it and the market and would not be affected by that transmission owner's parochial (and very likely self-interested) decisions. RTO West would thus be unable to ensure comparable, quality service to wholesale customers on different transmission owners' systems. Workably competitive wholesale markets simply will not develop if wholesale customers that compete with each other for the opportunity to serve new loads are subject to different rules that will affect the level and quality of service they receive, depending upon the ownership of the particular lines to which they are connected.

Second, the proposal would perpetuate the lack of comparability between wholesale and retail customers. Those transmission owners who are proposing to retain control over the facilities necessary to serve wholesale customers (like UAMPS) for some or all purposes would continue to be in a position to discriminate against their wholesale customers, or those taking service from alternative suppliers. Lacking full (or any) meaningful control over the relevant facilities, RTO West would be unable to address this problem. And, as the Commission noted in Order No. 2000, even the perception of continued discrimination has impeded the development of competitive wholesale electric markets. See Order No. 2000 at 31,017 ("Efficient and competitive markets will develop only if market participants have confidence that the system is administered fairly."). The

facilities proposal must be modified so that RTO West will have the ability to address discrimination in the provision of wholesale services.

E. Conclusion.

The filing utilities' proposal would deny RTO West sufficient authority over the facilities used to provide wholesale service within its region to allow it to provide reliable, non-discriminatory service at non-pancaked rates. To permit RTO West to fulfill its intended functions, and consistent with the Commission's direction that "most or all of the transmission facilities in a region should be operated by the RTO," including, where appropriate, higher voltage distribution lines and radial lines, the filing utilities should be ordered to give RTO West control of all facilities that serve or support wholesale customers. A transmission owner seeking to exclude facilities because of their purely "local" function must be required to demonstrate, using load flow studies or other documentation, that they are not necessary either to: (i) serve wholesale customers, or (ii) provide reliable service under N-1 and N-2 conditions.

IV. The RTO West Planning Proposal Fails to Meet the Requirements of Order No. 2000.

Order No. 2000 plainly states, and the Commission's subsequent orders have confirmed, that an RTO must have ultimate control over regional planning. See, *e.g.*, Order No. 2000 at 31,164; April 26 Order at 61,341; TRANSLink Order, slip op. at 40; Alliance Order, slip op. at 26. RTO West's Stage 2 planning proposal falls short of Order No. 2000's requirement that the RTO control the regional planning function in several

critical respects.[15] First, the proposal does not grant RTO West effective veto authority over projects proposed by Participating Transmission Owners. Second, RTO West's backstop planning authority is too limited under the proposal. Third, the proposal denies the RTO control over so-called "local planning" that may have a direct impact on particular wholesale customers and on the system as a whole. Fourth, the proposal allows transmission owners to substitute their own least-cost process for the RTO's. Finally, the "right to participate" proposed for Participating Transmission Owners, like a "right of first refusal" that the Commission has already rejected, would decrease the incentive for third parties to propose transmission projects and thereby unduly limit the RTO's planning options. The proposal must be modified to remedy these deficiencies and ensure that RTO West may effectively perform the regional planning function.[16]

A. RTO West Must be Able to Veto Participating Transmission Owners' Proposals.

Section 15.2.2 of the TOA states that "RTO West *shall approve* Executing Transmission Owner proposals for additions, modifications or expansions to RTO West Controlled Transmission Facilities to meet Transmission Adequacy Standards upon (1) confirming that the Executing Transmission Owner's proposal satisfies Transmission

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[15] As noted above, the filing utilities have also placed the planning provisions in the TOA instead of the tariff, which would effectively grant them perpetual control over the RTO's planning function. The planning proposal must instead be attached to the tariff so that it can be modified as future experience and conditions dictate. See Section I, *supra*.

[16] For similar reasons, and as UAMPS noted in its comments on the TransConnect Stage 2 proposal, the TransConnect pro forma planning protocol should be rejected. The TransConnect proposal attempts to preempt RTO West's planning authority and appropriate to the utilities that will form TransConnect significant planning functions. UAMPS' Stage 2 TransConnect Protest at 45.

Adequacy Standards and (2) finding that the proposal was either (i) developed in a least-cost planning process or (ii) evaluated, upon the request of the Executing Transmission Owner, through RTO West's least-cost planning process." TOA § 15.2.2 (emphasis added). Expansion projects proposed by Participating Transmission Owners are nominally subject to RTO West's authority, but "RTO West may not unreasonably withhold its approval." TOA § 15.2.3. Without effective veto power over expansions proposed by transmission owners (at least for proposals that must be included in the RTO's rates), however, an RTO cannot exercise adequate authority over the planning process. The filing utilities' proposal must therefore be modified to grant RTO West this authority.

As UAMPS pointed out in its protests in the TransConnect docket, an RTO must not be required to approve every proposal that does not threaten the system's reliability. See, *e.g.*, Protest of Utah Associated Municipal Power Systems, et al., Docket No. RT01-15-000, at 14-15 (Nov. 20, 2000); UAMPS' Stage 2 TransConnect Protest at 46. The RTO must instead have true veto authority so that it will have the power to choose among transmission projects at the regional level, taking into account both economic efficiency and any other applicable public interest goals. The proposal must therefore be modified to eliminate RTO West's obligation to approve any particular transmission owner proposals, and to make clear that RTO West may "reasonably" reject one proposal simply because, in its judgment, an alternative solution would better meet regional needs.[17]

[17] The problem caused by § 15.2.2's attempt to preempt RTO West's decision-making authority is exacerbated by the fact that the projects RTO West "shall approve" pursuant to that Section would apparently include projects developed in the transmission owner's own "least-cost planning process," rather than in the context of RTO West's

B. RTO West's Backstop Authority is Too Limited.

The RTO West Applicants have proposed that the RTO have the authority to expand RTO West Controlled Transmission Facilities[18] in four specific circumstances: (1) "to implement the provisions of Section 6.2.1.2" by ensuring adequate Available System Capacity to satisfy outstanding Transmission Service obligations;[19] (2) to "remedy insufficiency of the Executing Transmission Owner's Congestion Management Assets"; (3) to "ensure compliance with the Transmission Adequacy Standards"; and 4) when "the RTO West Board of Trustees in consultation with the Market Monitoring Unit demonstrates market failure to mitigate chronic, significant, commercial congestion." TOA § 14.2. These restrictions inappropriately limit the RTO's ability to require necessary transmission expansion in at least three ways. First, it appears that limitations on RTO West's authority to arrange for system expansions to ensure adequate Available Transmission Capacity to meet outstanding transmission service obligations may in fact preclude those obligations from being met. Second, the proposal contains excessive and inappropriate limits on RTO West's ability to order expansions to relieve existing or projected congestion. Finally, the proposal fails to recognize that new facilities may be needed for reasons other that to relieve "chronic, significant, commercial congestion."

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process. As discussed below, see Section IV.D, *infra*, the transmission owners cannot be permitted to substitute their own planning processes for RTO West's.

[18] As discussed in more detail in Section IV.C, *infra*, the filing utilities' proposal to withhold all facilities but Class A, or RTO West Controlled Transmission Facilities, from RTO West's ultimate planning authority should be modified.

[19] In Attachment I to the filing, this circumstance is described as "restor[ing] Total Transmission Capability as provided in the [TOA]." Filing Letter Att. I at 6.

The proposal should be modified to address these deficiencies, and to ensure that RTO West is in fact able to ensure a reliable transmission system that best meets the region's needs.[20]

First, the TOA improperly limits the RTO's backstop authority to arrange for transmission expansions to satisfy outstanding Transmission Service obligations. Section 6.2.1.2 permits RTO West to "arrange for an upgrade or expansion of the RTO West Controlled Transmission System" upon a finding that "additional Available System Capacity is needed to satisfy outstanding Transmission Service obligations other than those for which Participating Transmission Owners are obligated to provide Congestion Management Assets." However, "RTO West shall have no authority under this Section 6.2.1.2 to arrange for any upgrades or expansions that cause the aggregate capability of the Executing Transmission Owner's Transmission Facilities . . . together with any additional Congestion Management Assets provided by the Executing Transmission Owner, to become greater than it was as of the Transmission Service Commencement Date." TOA § 6.2.1.2. Thus, the RTO apparently may not ensure that its system, over time, remains adequate to meet "outstanding Transmission Service obligations" if the necessary expansion would cause the aggregate capability of the Transmission Owner's system to become greater than it was at the commencement of RTO operations. If it is to be able to provide reliable service, however, the RTO obviously must have the ability to

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[20] The Commission has recognized the need for RTOs to have a robust backstop planning role. In its recent TRANSLink order, for example, the Commission interpreted the Memorandum of Understanding between the Midwest ISO and TRANSLink to mean that "the Midwest ISO, in accordance with its responsibilities under Order No. 2000 to develop a regional plan for the entire Midwest ISO, may, for example, direct necessary transmission expansions by TRANSLink." TRANSLink Order, slip op. at 40; see also Alliance Order, slip op. at 26.

ensure that its facilities are adequate at least to meet existing obligations, even if the necessary upgrades would cause the total transmission capability of the transmission owner's system to increase. This restriction on RTO West's backstop authority should be removed.

Second, the proposal improperly and unnecessarily limits RTO West's ability to order system expansions to relieve congestion. As noted above, the filing utilities' proposal would prohibit any such expansions unless the RTO West Board of Trustees, "in consultation with the Market Monitoring Unit," "demonstrates market failure," to relieve commercial congestion that is "chronic" and "significant." TOA § 14.2. Moreover, "[d]emonstration of such market failure shall be based on substantial evidence on the record in a public process." *Id*. In total, this language creates a formidable obstacle to RTO West's ability to relieve congestion, and essentially ensures that this backstop authority will be available only in the most egregious circumstances, and only after "chronic" and "significant" congestion has been allowed first to develop and then to go unremedied for some length of time – a circumstance that, probably not coincidentally, may be quite profitable for market participants like the filing utilities. Rather than being hamstrung in this fashion, the RTO should be able to act as promptly as possible to relieve existing or projected congestion, without being required to make a "showing based on substantial evidence in a public proceeding" that "chronic" and "significant" congestion is due to "market failure," and not to any other cause. The public stakeholder

planning process and the need to obtain siting approvals from state commissions will provide adequate protection against overbuilding.[21]

Finally, the filing utilities' proposal fails to recognize that new facilities may be necessary for reasons other than to meet existing obligations and reliability standards, or to remedy "market failure." Markets do not recognize public interest concerns, such as promoting fuel diversity, that are of concern to many of the Western states. Thus, even when markets are working correctly, they cannot be relied upon to spur all transmission expansion that may be necessary from a balanced public interest perspective. See, *e.g.*, UAMPS' SMD Comments at 4. The RTO should not be precluded from exercising backstop authority to ensure the construction of facilities that it, after consideration in the context of its public planning process, deems necessary to meet regional goals simply because the facilities at issue may not be justified from a purely market-oriented perspective. The proposal should be modified to ensure that RTO West has authority to ensure construction of <u>any</u> facilities it deems necessary.

C. <u>The Proposal Improperly Denies RTO West Ultimate Planning Authority Over All Necessary Facilities</u>.

The filing utilities propose to grant RTO West "ultimate planning authority for long-range planning for the RTO West Controlled Transmission Facilities." TOA § 15.1. As discussed above, however, under the facilities proposal "RTO West Controlled Transmission Facilities" include only those facilities that, in the opinion of each of the

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[21] Chairman Wood made the same point at a recent Agenda meeting when he stated that he was not concerned about overbuilding because of the difficulty of getting approvals through the states' siting process. See Remarks of Chairman Pat Wood III to FERC Agenda Meeting (Apr. 24, 2002).

filing utilities, "materially impact the transmission system's transfer capability…and are necessary for RTO West to carry out its congestion management function." Filing Letter at 34 n.38. For all other classes of transmission facilities, RTO West will not have the "ultimate planning authority" required by Order No. 2000: As noted above, the filing utilities' proposal would deny RTO West ultimate planning authority over "Class B" facilities (that would, at the transmission owner's option, be turned over only for the purposes of access, pricing and cost recovery), "Class C" facilities ("Certain Distribution Facilities"), or "Class D" facilities ("local distribution facilities" that are necessary to provide wholesale service).

If it is to be able to engage in effective regional planning to facilitate a robust, regional wholesale market, however, RTO West must have planning authority over all of these facilities.[22] Consistent with the discussion in Section III above, the proposal should be modified to grant RTO West the required authority over planning for all facilities that provide wholesale service and have a potential impact on the region as a whole.

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[22] The Commission has indicated that "dual responsibility for certain functions…including transmission planning and expansion" may be shared with an independent transmission company. April 26 Order at 61,341. However, the Commission recently confirmed in its TRANSLink order that even local planning decisions may have a direct impact on the system as a whole, and that the RTO must have final oversight authority for any planning and expansion projects that affect facilities outside the transmission owner's footprint. See TRANSLink Order, slip op. at 40 ("[W]e will require TRANSLink and the Midwest ISO to modify the joint planning protocol such that the Midwest ISO has the final word on planning and expansion that may materially affect facilities outside of TRANSLink which are located within the Midwest ISO.").

The proposal here, by contrast, would deny RTO West authority over significant facilities, and instead leave that authority with constituent transmission owners, whether they are "independent" or not.

D. Transmission Owners May Not Substitute Their Own Least-Cost Planning Processes for RTO West's.

As noted above, the filing utilities propose that RTO West be required to approve transmission-owner proposals that, among other things, were "evaluated in a least-cost planning process." TOA § 15.2.2. The Participating Transmission Owner thus has the choice between developing a least-cost process for evaluating its own expansion proposals, or else submitting the proposals for evaluation under the RTO's least-cost process. The provision is plainly unacceptable: Participating Transmission Owners cannot neutrally select among competing proposals as part of a planning process, and should not be permitted to substitute their own evaluation processes for RTO West's.[23]

The Executing Transmission Owners can be expected to develop self-interested planning proposals designed to increase the profitability of their own generation or transmission assets. As UAMPS has noted elsewhere, this is true even of an independent transmission company: Because transmission solutions compete directly with generation and demand-side solutions to serve the market, a transmission owner will tend to favor transmission solutions, even if they do not represent the least-cost alternatives. See UAMPS' SMD Comments at 3. Thus, the filing utilities may not be permitted to bind the RTO's planning decisions by developing their proposals within their own individual "least-cost planning" processes.

Only the RTO should be empowered to decide which proposed solutions – generation, demand-side, or transmission – best meet the region's needs and which should be built and recovered through the RTO's rates. Although transmission owners

[23] As discussed above, moreover, RTO West should not be required to approve any particular transmission-owner proposals.

may of course use least-cost processes to develop their expansion proposals, the RTO must have ultimate responsibility for evaluating and deciding among proposals as part of its own process, which would evaluate costs as well as other public-interest objectives. The proposal to allow transmission owners to substitute their own least-cost processes for RTO West's should be rejected.

E. The Transmission Owners' "Right to Participate" in Expansions Within Their Service Area is Just a Slightly Watered Down Version of the "Right of First Refusal" Proposals that the Commission has Already Rejected.

Section 14.6.1 of the TOA gives the Participating Transmission Owner the "right to participate" in third-party upgrades to the RTO West Controlled Transmission Facilities within its service area. Like a "right of first refusal," however, this "right to participate" in expansion projects proposed by others would unduly impede RTO West's planning authority and should be rejected.

The Commission recognized the dangers associated with allowing transmission owners the right of first refusal over transmission projects planned within their service areas in the *GridSouth* order:

> "We found that these provisions unduly limited the authority of GridSouth over transmission planning, presenting the possibility of discrimination by self-interested transmission owners favoring their own generation (as well as the possibility of conflicts that could reduce reliability) and possibly precluding lower cost or superior transmission facilities or upgrades by third parties from being planned and constructed."
> *Order Denying Rehearing and Granting, in Part, Clarification*, 95 FERC ¶ 61,282, at 61,995 (May 30, 2001).

Attachment I to the Filing Letter attempts to distinguish the "right to participate" from a "right of first refusal" proposal by noting that the "right to participate" gives RTO West, the Participating Transmission Owner and the third-party project sponsor the right

to negotiate the appropriate level of Participating Transmission Owner participation in the project. See Filing Letter Att. I at 15. The proposal allows RTO West to suggest a resolution of any disputes over the Participating Transmission Owner's level of participation, subject to the dispute resolution process set forth in the TOA. See *id.* at 16. The RTO West proposal, however, like the *GridSouth* right of first refusal, would permit the filing utilities to appropriate for themselves the benefits of projects developed by others, and would thus impede third-party participation in the planning process.

Under the filing utilities' proposal, a third-party sponsor would face at least the possibility of a lengthy negotiation with the Participating Transmission Owner and the RTO over the benefits it would be permitted to retain from its proposal. If the RTO's resolution of the matter did not satisfy both parties, the dispute resolution process could be invoked, causing even further delay. Even more troubling, however, the "right to participate" would substantially reduce the benefits that third parties might expect to retain from their proposals. Depending upon the outcome of the negotiation and the dispute resolution process, the party developing and making the proposal might realize very limited benefits from the project. This uncertainty would be a serious disincentive to third parties to invest the resources necessary to develop and pursue potentially beneficial new projects.

The "right to participate," like the right of first refusal, is simply a mechanism by which the Participating Transmission Owners might appropriate for themselves the transmission rights or other benefits associated with transmission expansion projects developed and proposed by others. In order to avoid discouraging third-party project proposals, the Commission should reject the proposed "right to participate."

F. Conclusion.

RTO West must have ultimate decisionmaking authority over the planning and expansion process to ensure its ability to create a cohesive regional plan that will best advance the public interest. The proposal should be modified as discussed above to give RTO West the necessary authority over planning for its region.

V. The Proposal Should be Modified to Adequately Protect Existing Customers' Rights.

As the Commission is well aware, preservation of existing contract rights in the context of industry restructuring has been a critical issue for most stakeholders, including UAMPS. From the time that it issued Order No. 888, moreover, the Commission has recognized the equity of this position and has consistently declined to abrogate existing contracts. Most recently, the Commission raised the issue of how best to handle existing contracts in the implementation of a standard market design for transmission service in its Options Paper issued April 10, 2002, and reaffirmed that even if all customers were required to take service under the revised pro forma tariff upon the implementation of standard market design, "transitional steps" would be necessary to "ensure that existing customers continue to receive the approximate level and quality of service that they previously received." *Options for Resolving Rate and Transition Issues in Standardized Transmission Service and Wholesale Electric Market Design*, Docket No. RM01-12-000, at 8 (Apr. 10, 2002). The Commission has thus recognized that even if existing contracts are not formally preserved (as UAMPS strongly believes they should be), existing customers should retain the basic rights to service embodied in those contracts.[24]

[24] As discussed in UAMPS' Comments on the Commission's Options Paper, we do not believe that the Commission's intent to ensure that existing customers continue to

Although Order No. 2000 does not formally mandate that an approved RTO must preserve either existing contracts or existing customers' rights, given the central importance of this issue to industry restructuring, UAMPS believes it is not only appropriate, but critical, that the Commission ensure that RTO proposals deal adequately and equitably with existing contract rights. Because the RTO West Stage 2 filing as proposed does not do so, UAMPS respectfully requests that the Commission direct the filing utilities to remedy this shortcoming.

The filing utilities propose to meet the objective of honoring existing contract rights upon the implementation of RTO West through the use of "Catalogued Transmission Rights" ("CTRs"). Under the proposal, each filing utility will specifically identify the transmission rights that are contained in existing contracts to which it is party (as well as those necessary to serve its retail native load) in an attachment to its TOA. The filing utilities will be able to use these CTRs as credits against congestion charges in order to continue to provide service to native load and to unconverted existing contract customers. If an existing contract is suspended and converted to RTO service, the customer is to receive the CTRs attributable to its service. See TOA § 9.3.1.

UAMPS generally supports the proposed use of CTRs to preserve existing contract rights. It seems plain, moreover, that assigning those Transmission Rights to the customer upon conversion of an existing contract to RTO service is critical if existing

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receive even the approximate level of service they currently receive can be met, at least in the West, if all customers are forced to transfer to service under the pro forma tariff upon the implementation of standard market design. For this reason, UAMPS strongly believes that existing customers should be encouraged, but not required, to transfer to the pro forma tariff. See Comments of Utah Associated Municipal Power Systems on the Commission's Standard Market Design Options Paper, Docket No. RM01-12-000, at 4-6 (May 1, 2002).

customers are to have any practical ability to move toward RTO service. UAMPS is concerned, however, that the filing utilities' proposal apparently will not involve or protect the wholesale transmission customers – the parties on whom CTR decisions will have the most direct impact – in the identification and allocation of those Rights.

At the outset, UAMPS notes that the proposal actually guarantees only the filing utilities themselves the right to retain equivalent rights and service upon the implementation of RTO West: Section 8 of the TOA provides that "*[t]he Executing Transmission Owner* shall have rights to Transmission Services over the RTO West Transmission System . . . on a basis comparable with rights held before the Transmission Service Commencement Date." (Emphasis added). Similarly, § 8.2 permits RTO West to "implement changes to its pricing or congestion management methods, *provided that the Executing Transmission Owner* shall continue to have rights as set forth in Section 8 . . . ." (Emphasis added). The customer's corresponding right is implied, but nowhere stated. This omission should be remedied.

Next, customers must be placed in a position to protect their rights to continue receiving service comparable to that provided by their existing contracts. UAMPS understands that the filing utilities are in the process of unilaterally developing the lists of CTRs that will be included in their Exhibits F. Their customers, however, are not being included in that process. And, under the terms of the TOA, only the filing utilities will have the explicit right to revisit initial CTR allocations: Section 8.3 provides that "*if the Executing Transmission Owner determines* or, pursuant to a dispute resolution process, it is determined that the catalogue set forth in Exhibit F does not satisfy a transmission customer's rights, the Catalogued Transmission Rights shall be modified to satisfy such

rights." (Emphasis added.) The customers are thus being excluded altogether from the initial determination of what transmission rights are necessary to fulfill their load service obligations under their existing contracts. To ensure that existing contract rights are adequately catalogued and to minimize the potential for later disputes, both parties to those contracts should be involved in identifying or describing the transmission rights that those contracts provide.

The potential problems caused by excluding the customer from the process of identifying CTRs as an initial matter is then compounded by the filing utilities' proposal to include the CTR definitions and protections in the TOA – a contract to which only the Executing Transmission Owner and RTO West will be party.

The language of the TOA implies that someone other than the Executing Transmission Owner – presumably the transmission customer – may somehow have the ability to invoke the dispute resolution process to contest the initial CTR allocations. As noted above, for example, § 8.3 of the TOA provides that Exhibit F will be modified if, "pursuant to a dispute resolution process, it is determined that the catalogue set forth in Exhibit F does not satisfy a transmission customer's rights."

Similarly, § 9.3.2 of the TOA provides that if the customer elects to suspend a pre-existing contract:

> "RTO West shall provide notice to the Executing Transmission Owner if the [customer] disputes the Catalogued Transmission Rights developed by RTO West and the Executing Transmission Owner. The Executing Transmission Owner . . . agrees to make a good-faith effort to resolve differences with the [customer] . . . . If full agreement is not reached, the Executing Transmission Owner . . . agrees to be a responding party with RTO West in an RTO West Arbitration Process to resolve any dispute concerning the conversion of any Pre-Existing Agreements and Obligations into Catalogued Transmission Rights or the conversion of

> Catalogued Transmission Options consistent with the terms and procedures set forth in Exhibit P."[25]

Although the filing utilities thus apparently contemplate that customers should have the right to ensure that the CTRs (or Financial Transmission Options) they receive from RTO West will in fact be adequate to maintain the rights guaranteed by their existing contracts, the Stage 2 filing in fact does not secure the customer's right to have an independent arbiter – whether it be the Commission or some other body – resolve that issue. Because it is spelled out only in the TOA, a document to which the customer will not be party, the customer's right to challenge "the Catalogued Transmission Rights developed by RTO West and the Executing Transmission Owner" upon conversion to RTO West service is not secure. The TOA specifies (in § 25.12) that it does not "create rights in, or grant remedies to, any third party," and non-party stakeholders would not ordinarily be able to rely upon, or challenge a violation of, the TOA's terms.

Finally, even if the customer's right to enforce its existing contract rights through dispute resolution were secure, the filing utilities' proposal here would establish special – and at least in one respect unacceptable – provisions applicable to these disputes. Exhibit P sets forth a list of terms and conditions that specifically limit the transmission owner customer's ability to pursue arbitration for disputes over the customer's CTRs. See TOA Exh. P at P-2, P-3. At least one of those conditions – that the "Executing Transmission

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[25] The TOA provides that upon the implementation of RTO West, the Executing Transmission Owner will make a "good-faith offer to each Executing Transmission Owner customer" to convert to RTO West service in exchange for, among other things, "either (i) receipt by the [customer] of Financial Transmission Options from RTO West or (ii) receipt by the [customer] of Catalogued Transmission Rights from RTO West." § 9.3.1. Apparently, at this point, the customer has a theoretical right to challenge the CTR allocation it is entitled to receive.

Owner customer shall have the burden of proof" – must be eliminated. TOA Exh. P at P-3. The filing utilities will not be required to prove to any outside arbitrator that they are entitled to the CTRs they need: As noted above, they are in the process of unilaterally determining what their initial CTRs will be. And, the TOA specifically provides that "if the Executing Transmission Owner determines…that the [initial] catalogue…does not satisfy a transmission customer's rights, the Catalogued Transmission Rights shall modified to satisfy such rights." TOA § 8.3. There is no justification for requiring other load-serving customers to prove what the filing utilities are permitted to simply assert. At the least, existing customers should not be forced to bear the burden of proof to establish their CTRs. The accompanying risk of losing transmission rights necessary to serve their loads would act as a major disincentive to converting to RTO West service.

The rights of existing wholesale transmission customers, no less than those of the filing utilities, must be protected upon the implementation of RTO West. The filing utilities should be directed to modify their proposal to meet this objective by: (1) including customers in the initial development of CTRs; and (2) including appropriate provisions in the RTO West tariff to ensure that customers, as well as the filing utilities, will be entitled to retain their existing rights and service, and that customers will be able to challenge their CTR allocations both while they are taking unconverted transmission service and upon any decision to convert to RTO West service.

VI. The Commission Should Reserve Judgment on the Pricing Proposal.

The filing utilities state that they "seek approval only of the transitional pricing methodology. Actual rate filings will be timely submitted before the RTO West begins commercial operations." Filing Letter at 30. Presumably, this disclaimer at least means

that no Commission approval is sought for any particular rate amount shown on the spreadsheets included in corrected Attachment E2. See Filing Letter Att. E2 at 12 (stating that "appropriate filings to establish actual RTO West transmission service rates" will be made in the future and implying, but not quite stating, that these "appropriate" filings will be Section 205 filings with all accompanying procedural and regulatory protections).[26] Beyond that, however, UAMPS is unsure of the metes and bounds of the "pricing methodology" for which approval is sought. To avoid future disputes over which of the many details contained in the filing utilities' twenty-four page "Attachment E" have been expressly "approved," however, UAMPS urges the Commission to withhold judgment on the pricing proposal as submitted and to direct the filing utilities to state with specificity which particular aspects of the "pricing methodology" they would like the Commission to approve.

As a general matter, UAMPS supports the conceptual approach taken by the filing utilities in their Stage 2 pricing proposal, particularly with regard to their emphasis on eliminating rate pancaking, avoiding immediate cost shifts through transitional application of Company Rates, and assuring that all users of the transmission system make a contribution to the fixed costs of the system. See Filing Letter at 27; Filing Letter Att. E1 at 1-7.

To implement these concepts, however, the filing utilities have proposed a complicated matrix of volumetric and non-volumetric Company Rates, Transfer Charges,

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[26] The Commission's rules under Section 205 do not accommodate a two-year forward test period. Therefore, the filing utilities' proposal to use a two-year projected test period for setting the license plate Company Rates introduces some question as to whether a Section 205 filing or a less prescribed form of filing is intended.

Grid Management Charges, External Interface Access Fees, Congestion Management Charges, Replacement Revenue Pools, and Backstop Recovery Mechanisms, Filing Letter Att. E1 at 16-24, and they have provided an "illustrative" example of how some of these various charges might be calculated for each of the filing utilities, Filing Letter Att. E2 at 11 (as corrected and supplemented by April 22, 2002, Errata Filing).

If approval of any portion of the "methodology" for calculating a particular rate is intended, then UAMPS vigorously opposes that much of the filing utilities' request as premature. Such matters as what billing determinants will be used, how and whether bundled requirements loads of the filing utilities will be subject to the pricing protocols, how credits from low-priced non-converted agreements will be calculated (actual revenues or allocated shares of revenue requirements), and whether adding transmission by others expense (Account 565) to revenue requirements for Company Rates applicable to other than the filing utilities' merchant functions is appropriate (see Filing Letter Att. E2 at 12) are simply not ripe for decision on this record. The proposal does not even clearly address many of these issues; others simply have not been adequately examined and tested. As a result, it is more than final dollar figures on which the Commission should withhold judgment; at minimum any and all issues regarding the inputs, development and calculation of those final figures should also be expressly reserved to avoid later dispute.

Even an expressly circumscribed and limited approval of the proposed pricing methodology, however, runs a risk of inducing later misunderstanding and dispute over exactly what and what level of detail was approved. In the event of approval, various stakeholders could and probably will differ over what in the proposal constitutes a

binding "pricing methodology" issue and what constitutes a nonbinding "rate development" matter. What might have seemed like clear restrictions of the scope of approval at the time may turn out to have left unintentional loopholes or opportunities for revisionism.

Such difficulties have surfaced in this proceeding before. In Stage 1 of these proceedings, stakeholders and interveners like UAMPS understood that the filing utilities' Stage 1 filing was, among other things, "to obtain a declaratory order approving the form of" the proposed RTO West Articles of Incorporation and Bylaws, "to obtain a declaratory order" approving the proposed scope and configuration of RTO West, "to obtain a declaratory order approving the form of" the proposed limitation of liability agreement, and "to provide the Commission with copies of the current form[] of Transmission Operating Agreement * * * ." Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000, Docket No. RT01-35-000, at 11 (Oct. 23, 2000). UAMPS and numerous other stakeholders understood the foregoing language to have left the Transmission Operating Agreement out of the requests for approval, and they did not include extensive discussion of that agreement in their comments on the Stage 1 filing. Upon issuance of the April 26 Order and the commencement of Stage 2, however, the filing utilities took the position that the April 26 Order had approved the Transmission Operating Agreement and that revisions to that agreement proposed by any stakeholders other than the filing utilities would not be entertained.[27]

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[27] That position was later modified *sub silentio* when a substantially revised TOA was put out for comment by the filing utilities themselves.

In view of the very real possibility for similar unnecessary disputes, UAMPS urges the Commission not to give approval at this time of whatever the filing utilities may mean by their "pricing methodology," however circumscribed the Commission may intend its approval to be. Since no rates or level of revenue recovery is to be approved, it would not appear that a broad approval of methodology at this time is necessary to enable the filing utilities to go forward with the RTO West proposal. Instead, the utilities should be directed to state clearly what particular pricing principles they need to have established in order to proceed further, and why. They may, for example, legitimately need to know if the eight-year Company Rate proposal is acceptable in order to soothe state regulators jittery over possible cost-shifts. If so, they should directly seek approval of that. Approval of 24 pages of dense narrative entitled "RTO West Pricing Proposal," however, any or all of which could be argued to be part of the proposed "pricing methodology," see Filing Letter Att. E1, would sweep far more broadly than necessary to accommodate such a very limited need. Accordingly, UAMPS urges the Commission to withhold judgment on any aspect of the pricing proposal and to instead require the filing utilities to state with specificity each particular methodological principle that they want the Commission to approve.

VII. RTO Participation Should Be Mandatory.

In its Comments filed in response to the Commission's Order No. 2000 Notice of Proposed Rulemaking, UAMPS urged the Commission, among other things, to make RTO participation mandatory. See Comments of Utah Associated Municipal Power Systems on Notice of Proposed Rulemaking, Docket No. RM99-2-00, at 15-22 (Aug. 23, 1999). As we noted then, only by mandating participation would the Commission be able

to ensure that RTOs are actually up and running within a reasonable time, while avoiding the need to obtain voluntary participation with unnecessary "incentives" that would increase costs for customers. *Id.* The Commission declined to mandate participation at that time. See Order No. 2000 at 31,033-34. We believe the time has come, however, to revisit this issue.

The filing utilities' Stage 2 proposal, like their Stage 1 proposal, contains provisions giving the utilities broad rights to terminate their TOAs and withdraw from RTO West at any time. At the outset, § 2.1 of the TOA provides that it shall not become effective (and RTO West thus shall not come into existence at all) if it is not approved "without change unacceptable to either Party." Similarly, even after RTO West has become operational, § 2.3 provides that "[t]he Executing Transmission Owner may terminate this Agreement for any reason upon two (2) years' prior written notice" (§ 2.3.1) and may terminate on a much shorter timeframe in numerous other circumstances (§§ 2.3.2-2.3.4). By allowing transmission owners these apparently limitless withdrawal rights, the proposal will effectively make RTO West captive to its transmission-owner members for its very existence

The existence of these termination provisions may also seriously impede RTO West's ability to create or foster competitive markets. Transmission customers making long-term resource planning decisions must be able to count upon the continued existence of RTO West – and the participation of specific utilities in that RTO – in order to rely in any significant way on the RTO in making those decisions. Without this assurance, customers will be far less likely to make investments that depend upon RTO West

service, or to convert existing service contracts to RTO West Transmission Service. To ensure that RTOs are able to fulfill their potential, the Commission should now consider making clear that RTO participation is expected, and not purely voluntary, and direct the filing utilities to modify their proposal accordingly.

VIII. The Filing Utilities Should Open the Interregional Coordination Steering Group to a Public Stakeholder Process.

The Stage 2 Filing acknowledges that the filing utilities' interregional coordination, *i.e.*, RTO Function 8 (see Order No. 2000 at 31,166), efforts are conducted through a "Steering Group" that is at this time open only to representatives of the RTO West filing utilities themselves and to representatives of WestConnect and the California ISO. See Filing Letter at 56. No other stakeholders are invited to participate or even to observe,[28] although "notes" of Steering Group meetings are posted on the RTO West website. *Id.* at 58. Indeed, although the filing utilities are apparently open to allowing "meaningful participation by state and provincial representatives" in the Steering Group structure, apparently they have not contemplated any participation, much less meaningful participation, by any other stakeholders in the Steering Group process. Those stakeholders evidently must await activity by any work groups that the Steering Group may form "as required to perform its work." *Id.*

[28] Although the Steering Group membership currently "consists of policy-level representatives from the California ISO, RTO West and WestConnect" only, "[t]he filing utilities believe that the Steering Group structure should also be designed to provide for meaningful participation by state and provincial representatives." *Id*. at 57.

In UAMPS' view, this procedure, whereby seams issues are to be resolved primarily, and to this point have been addressed almost exclusively, by "policy-level" representatives of the filing utilities behind closed doors, bears little resemblance to the open collaborative process described in Order No. 2000:

> "By collaborative process, we mean a process whereby transmission owners, market participants, interest groups, and government officials can attempt to reach mutual agreement * * * ." Order No. 2000 at 31,221.

The only "mutual agreements" being reached on interregional coordination right now are among the transmission owners themselves; the other stakeholders contemplated in Order No. 2000's "collaborative process" are locked out. *Id*.

UAMPS has on a number of occasions explained to the Commission that it is vitally concerned with seams issues because it has significant load and resources in two of the three proposed western RTOs-- RTO West and WestConnect. See, *e.g.*, UAMPS' RTO West Stage 1 Protest at 2-4, 24-27; UAMPS' WestConnect Protest at 2-4. In this regard, UAMPS is almost uniquely situated; for this reason, UAMPS, though relatively small in the universe of load-serving entities, nonetheless has devoted the resources to serve on the Regional Representatives Group of RTO West and to participate in several of its working groups, and also (until the Desert STAR stakeholder process was abruptly terminated by the WestConnect filing utilities) to be an active participant in the development of Desert STAR. Three of UAMPS' members were members of Desert STAR, and a representative of UAMPS (itself also a member of Desert STAR) was an *ex officio* member of Desert STAR's Board of Directors and served on Desert STAR's stakeholder Advisory Committee. Because of its interests and concerns regarding seams

issues, UAMPS would also devote resources to the RTO West "Steering Group" process, were it permitted to do so.

UAMPS urges the Commission to direct RTO West and the filing utilities to bring their interregional coordination efforts into the open and to seek, not just accept, meaningful participation and input from all stakeholders. There is no sound reason why interregional coordination should be singled out among all the characteristics and functions required by Order No. 2000 and made exempt from the stakeholder process.

CONCLUSION

For the reasons discussed above, UAMPS respectfully requests that the Commission condition its order on the Stage 2 filing and direct the filing utilities to make the following modifications: First, the provisions of the TOA limiting RTO West's authority over rate filing, generator interconnections, and its budget should be removed, and the TOA provisions governing RTO West's performance of its core functions should be moved to the tariff. Second, the dispute resolution provisions should be modified so that they do not apply to all of RTO West's operations and moved out of the TOA and into the tariff to make their protections available to all stakeholders. Third, the filing utilities should be required to transfer to RTO West full control over all transmission or other facilities used to provide or to support service to wholesale customers, and, if they seek to exclude facilities because of their purely "local" function, transmission owners should be required to demonstrate, using load flow studies or other supporting documentation, that the facilities are <u>not</u> necessary either to: (i) serve wholesale customers, or (ii) provide reliable wholesale transmission service under at least N-1 and N-2 conditions. Fourth, the filing utilities should be directed to amend their planning

proposal to give RTO West veto authority over transmission owners' proposals, adequate backstop authority, ultimate planning authority over all facilities that provide or support wholesale service, and full control over the least-cost planning process, as well as to eliminate the transmission owners' "right to participate" in third-party upgrades. Fifth, the filing utilities should be directed to include customers in the initial development of Catalogued Transmission Rights and to include provisions in the tariff to allow customers to protect their existing rights and service and to challenge their CTR allocations. Sixth, the Commission should refrain from approving the pricing proposal and instead direct the filing utilities to make a more detailed filing stating with specificity each particular methodological principle that they want the Commission to approve. Seventh, the Commission should make RTO participation by jurisdictional utilities mandatory. Finally, the Commission should direct RTO West and the filing utilities to seek meaningful participation from all stakeholders in their interregional coordination efforts with the other RTOs.

Respectfully submitted,

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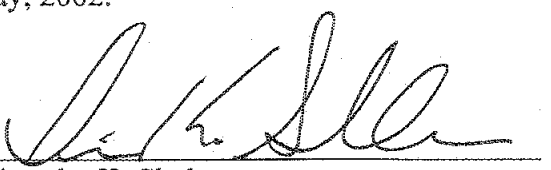
May 30, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Washington, D.C., this 30th day of May, 2002.



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APPENDIX A

BEFORE THE
NEVADA PUBLIC UTILITIES COMMISSION

DOCKET NO. PUCN 01-11030

In the Matter of
Sierra Pacific Power Company's
General Rate Increase Filing

TESTIMONY AND EXHIBITS

OF

STEPHEN PAGE DANIEL
ON BEHALF OF
NEWMONT MINING CORPORATION

March 22, 2002

Q. Describe the transmission facilities and HVD facilities that constitute the facilities that deliver power into and through the Carlin Trend area of Sierra Power's system.

A. The transmission facilities and now reclassified HVD facilities connecting the Carlin Trend area into the remainder of the transmission grid and delivering power into and through the area generally consist of the following: (1) two 345 kV lines – one from Valmy to Falcon ("Valmy-Falcon 345 kV line") that connects to certain 120 kV lines in the area, and one from Valmy to Idaho Power Company ("IPC") at Midpoint ("Valmy-IPC 345 kV line"), which connects to certain 120 kV facilities in the area and also serves as an interconnection with IPC; and (2) a series of looped 120 kV and 60 kV lines and some 120 kV radially constructed lines serving various loads within the area.

Q. How is the Valmy-IPC 345 kV line treated for cost allocation purposes by Sierra Power?

A. The Valmy-IPC 345 kV line is a transmission facility, and the associated costs are allocated to all customer classes.

Q. How is the Valmy-Falcon 345 kV line treated for cost allocation purposes by Sierra Power?

A. The capital costs of this facility were directly assigned to certain customers which have paid facilities charges to Sierra Power for those facilities. Newmont is still paying such facilities charges, although apparently Barrick and Cortez Pipeline are no longer making the capital-recovery related payments.

Q. Do the Valmy-Falcon 345 kV line and the networked 120 kV facilities to which it is connected provide any benefits to the Sierra Power system other than to serve the GS-4 loads in Carlin Trend area?

A. Yes. The cross-examination of Mr. Gary L. Porter, a witness on behalf of Sierra Power in Docket No. 99-4001, provides valuable insight to how the network of 345, 120 and 60 kV facilities in and around the Carlin Trend and Valmy areas would function under various conditions. For example, he indicated that if outages were to occur on various segments of the Valmy-IPC 345 kV line (*e.g.*, Humboldt to Coyote Creek and Valmy to Coyote Creek), the flows on lines, both 345 and 120 kV, in that region would redistribute as a result of the various outages, and that under certain conditions the direction of power flows on particular lines could change as part of that redistribution (Tr. at 1745-1749). This clearly indicates that the facilities within this region provide mutual support under contingency conditions. This mutual support affects other customers in these areas other than the GS-4 customers, such as service to Elko and the town of Spring Creek. And, such support would include the Valmy-Falcon 345 kV line under these contingencies as noted by Mr. Porter.

Q. Is there a particular reason why you have cited Mr. Porter's testimony in addressing the benefits of the Valmy-Falcon line to the system and other customers besides the GS-4 customers?

A. Yes. Newmont posed several data requests to Sierra Power seeking information on power flows and changes in power flows on certain facilities in the event of outages on the

Humboldt-Coyote Creek 345 kV line and the Valmy-Coyote Creek 345 kV line (Exhibit ___ (SPD-6)), two obvious contingency scenarios, both of which were specifically discussed with Mr. Porter in the testimony on Docket No. 99-4001. In response to these data requests, Sierra Power did not provide any such analyses, but did acknowledge, similarly but in a more general way than Mr. Porter in his cross in the earlier docket, that flows would change. The response states that "[t]he outage results are only meaningful during specific study conditions and are not scheduled to be studied" (*id.*, pp. 1 and 2, respectively, part (a)). I was somewhat surprised that studies do not already exist for the loss of a major 345 kV interconnection that would potentially impact the Sierra Power system, including the parallel 345 and 120 kV lines in and around the Carlin Trend area, and the significant portion of its load within this area. Hence, Mr. Porter's testimony is helpful in better understanding the responsiveness of these facilities under contingency conditions, which is one aspect of considering how to allocate facilities costs to customers.

Q. Are there other potential system benefits associated with the Valmy-Falcon 345 kV line and the related 120 kV networked facilities?

A. Yes. Also in Docket No. 99-4001, Mr. Porter acknowledged that Sierra Power had reported in its May 1, 1995 electric and gas integrated resource plan that completion of the Valmy-Falcon 345 kV line would increase Sierra Power's export capability, a conclusion that he accepted (Tr. at 1765-1766). Import and export capability provide operating flexibility, increase reliability, and increase the potential to achieve economic benefits from opportunity

trading of bulk power. Such benefits created by the Valmy-Falcon line are shared by all customers eventually, not just the GS-4 customers.

Mr. Porter also acknowledged that the Valmy-Falcon 345 kV line produced other benefits to the system in the form of reduced losses, increased stability under certain contingency conditions, and increased transmission transfer capability (Tr. at 1769-1772). He also acknowledged these benefits are provided in large measure in conjunction with the 120 kV HVD facilities in the Carlin Trend area (Tr. at 1772). Again, such benefits accrue to all customers, including transmission-only customers, not just the GS-4 customers.

Q. Are there other facilities in the Carlin Trend area other than the Valmy-Falcon 345 kV line that have been allocated to and are being paid for by specific customers?

A. Yes. According to Sierra Power's response to Newmont data requests 2-15 (Exhibit ___ (SPD-7)) and 2-16 (Exhibit ___ (SPD-8)), part of the Coyote Creek and Bell Creek substations, all of the Maggie Creek Switching Station, and all of the Bell Creek-Maggie Creek 120 kV line are allocated to and paid for by Newmont (through the Bonneville Power Administration ("BPA")) as part of an arrangement for BPA to serve Newmont's Gold Quarry load in the Carlin Trend (Exhibit ___ (SPD-7), part b. and d. and attachment). (Newmont's Gold Quarry facilities are adjacent to the Newmont Gold facilities served by Sierra Power but are in the service territory of Wells REC.) These facilities were identified by Ms. Laura Lippiarelli as being partially or totally assigned as shown on a color-coded facilities diagram

(Region #7 Distribution System Reference Drawing) presented as part of her rebuttal testimony on behalf of Sierra Power in Docket No. 99-4001 (Hearing Exhibit No. 104).

According to Sierra Power's response to Newmont data request 2-17 (Exhibit ___ (SPD-9)), other facilities within the Carlin Trend have been partially allocated to specific customers. For example, portions of several substations and 120 kV lines, excluding radially constructed facilities and dedicated substations, have been assigned to Barrick and BPA (*id.*, attachment). Likewise, these facilities were so identified by Ms. Lipparelli in Docket No. 99-4001. I should note that Newmont ultimately pays the charges allocated to BPA.

Q. What is the significance of these direct assignments of portions or all of the identified facilities within the Carlin Trend area?

A. As noted by Mr. Porter, the 120 kV facilities just noted operate in conjunction with the 345 kV lines in the area to produce system benefits. The fact that certain GS-4 customers pay directly for all or substantial portions of these other HVD facilities in the Carlin Trend area is significant in understanding the overall cost support for the HVD system that is paid directly or indirectly by Newmont and other GS-4 customers.

Q. What conclusions have you drawn regarding the 345 and 120 kV facilities in the Carlin Trend and Valmy areas?

A. First, the Valmy-IPC 345 kV line, Valmy-Falcon 345 kV line, and the looped 120 kV facilities in the Carlin Trend and surrounding area tied to those 345 lines operate much like network transmission facilities, even though the 120 kV facilities, which were previously

classified as transmission facilities, have been reclassified as HVD facilities. The 120 kV facilities would provide reliability support to the 345 kV facilities if certain outages of 345 kV lines occur. Specifically, the Valmy-Falcon 345 kV lines, in conjunction with the 120 kV facilities in the area increase system reliability.

Second, the system, not just certain GS-4 customers, benefitted from reduced losses, increased export capability, and increased transmission transfer capability produced by installing the Valmy-Falcon 345 kV line.

Third, the Valmy-Falcon 345 kV line was paid for in large measure, directly or indirectly, by Newmont and other mine loads.

Fourth, the operational relationship among these 345 and 120 kV facilities suggests that they exhibit transmission network characteristics, notwithstanding that the 120 kV facilities have been reclassified as HVD facilities.

Fifth, Sierra Power's proposal to allocate costs associated with portions of the HVD facilities in the area directly to Newmont (and other mine loads) without a corresponding allocation of a portion of the costs of the Valmy-Falcon 345 kV transmission line and other wholly-assigned facilities in the Carlin Trend to all other retail customers on the Sierra Power system would be unjust, unreasonable and inequitable and result in cross-subsidization of the customers other than those GS-4 customers, which would pay the additional distribution charges proposed by Sierra Power.

Sixth, Sierra Power's proposal to allocate **additional** HVD facilities to the GS-4 customers, if adopted, would ignore the significant direct allocations of HVD facilities to such customers under existing arrangements.

Q. Is Sierra Power planning to extend the Valmy-Falcon 345 kV line to Gonder to strengthen its interconnection with PacifiCorp?

A. Yes. It is my understanding this project is under way and planned for completion in June 2003.

Q. What impact will this additional interconnection have on the system?

A. I have not analyzed this facility expansion, but normally one would expect new interconnections to provide system benefits such as increased export and import capability, increased transmission transfer capability, and improved system reliability.

BEFORE THE
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AFFIDAVIT

STATE OF GEORGIA)
) SS:
COUNTY OF COBB)

I, **Stephen Page Daniel**, being duly sworn, certify that the attached testimony and exhibits in this docket were prepared by me or under my supervision and that the answers contained in such testimony and exhibits are true and correct to the best of my knowledge and belief.

Stephen Page Daniel

Subscribed and sworn to before me this 20th day of March, 2002.

Notary Public

Notary Public, Cobb County, Georgia.
My Commission Expires Jan. 7, 2003.